

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

## BANK OF AMERICA, N.A.,

Case No.: 2:16-cv-00399-APG-DJA

## Plaintiff

## MOUNTAIN GATE HOMEOWNERS' ASSOCIATION

**Order Granting Plaintiff's Motion for  
Summary Judgment and Denying as Moot  
Mountain Gate's Motion for Summary  
Judgment**

## Defendants

[ECF Nos. 78, 79]

Plaintiff Bank of America, N.A. sues to determine whether a deed of trust still encumbers property located at 6517 Angel Mountain Avenue in Las Vegas following a non-judicial foreclosure sale conducted by a homeowners association (HOA), defendant Mountain Gate Owners Association (Mountain Gate). Bank of America seeks a declaration that the HOA foreclosure sale did not extinguish the deed of trust and it asserts alternative damages claims against Mountain Gate and Mountain Gate's foreclosure agents, defendants Hampton &ton P.C. and Hampton & Hampton Collections, LLC (together, Hampton). Defendant Angel Mountain Trust (Trust) purchased the property at the HOA sale. Trust reclaims to quiet title in itself.

19 Bank of America moves for summary judgment on its declaratory relief claim, arguing  
20 that it tendered the superpriority amount prior to the sale, thereby preserving the deed of trust.  
21 Alternatively, Bank of America contends the sale should be equitably set aside. Trust opposes  
22 Bank of America's motion, arguing that there is no basis to set aside the sale. Trust also argues  
23 equity does not favor setting aside the sale because it is a bona fide purchaser.

1 Mountain Gate moves for summary judgment, arguing that it complied with the law when  
2 foreclosing, so there is no basis to impose liability on it. Mountain Gate and Bank of America  
3 agree that if the tender preserved the deed of trust, Bank of America's alternative damages  
4 claims are moot.

5 The parties are familiar with the facts, so I do not repeat them here except where  
6 necessary to resolve the motions. I grant Bank of America's motion because no genuine dispute  
7 remains that it tendered the superpriority amount, thereby preserving the deed of trust by  
8 operation of law. I dismiss as moot Bank of America's alternative damages claims against  
9 Mountain Gate and Hampton, and so I deny as moot Mountain Gate's motion for summary  
10 judgment.

## 11 I. ANALYSIS

12 Summary judgment is appropriate if the movant shows "there is no genuine dispute as to  
13 any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P.  
14 56(a), (c). A fact is material if it "might affect the outcome of the suit under the governing law."  
15 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute is genuine if "the evidence  
16 is such that a reasonable jury could return a verdict for the nonmoving party." *Id.*

17 The party seeking summary judgment bears the initial burden of informing the court of  
18 the basis for its motion and identifying those portions of the record that demonstrate the absence  
19 of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The  
20 burden then shifts to the non-moving party to set forth specific facts demonstrating there is a  
21 genuine issue of material fact for trial. *Sonner v. Schwabe N. Am., Inc.*, 911 F.3d 989, 992 (9th  
22 Cir. 2018) ("To defeat summary judgment, the nonmoving party must produce evidence of a  
23 genuine dispute of material fact that could satisfy its burden at trial."). I view the evidence and

1 reasonable inferences in the light most favorable to the non-moving party. *Zetwick v. Cnty. of*  
 2 *Yolo*, 850 F.3d 436, 440-41 (9th Cir. 2017).

3 Under Nevada law, a “first deed of trust holder’s unconditional tender of the superpriority  
 4 amount due results in the buyer at foreclosure taking the property subject to the deed of trust.”  
 5 *Bank of Am., N.A. v. SFR Investments Pool 1, LLC*, 427 P.3d 113, 116 (Nev. 2018) (en banc). To  
 6 be valid, tender must be for “payment in full” and must either be “unconditional, or with  
 7 conditions on which the tendering party has a right to insist.” *Id.* at 118.

8 Bank of America has met its initial burden on summary judgment of establishing that it  
 9 tendered the superpriority amount in full. The monthly HOA assessment was \$79.50 per month.  
 10 ECF No. 78-8 at 12. Prior to the HOA foreclosure sale, Bank of America tendered \$715.50 to  
 11 Hampton to cover the superpriority amount. *Id.* at 14-16. Hampton accepted the check. *Id.* at 18.  
 12 Trust has presented no contrary evidence in response. Consequently, no genuine dispute remains  
 13 that the superpriority lien was extinguished and the property remains subject to the deed of trust.  
 14 *Bank of Am., N.A.*, 427 P.3d at 121.

15 “[T]ender of the superpriority portion of an HOA lien satisfies that portion of the lien by  
 16 operation of law.” *Id.* at 120. Because “valid tender cured the default as to the superpriority  
 17 portion of the HOA’s lien, the HOA’s foreclosure on the entire lien resulted in a void sale as to  
 18 the superpriority portion.” *Id.* at 121. A “party’s status as a [bona fide purchaser] is irrelevant  
 19 when a defect in the foreclosure proceeding renders the sale void.” *Id.* Thus, I do not weigh the  
 20 equities if tender was valid because “the voiding of the foreclosure sale as to the superpriority  
 21 portion of the lien is ultimately the result of the operation of law and not equitable relief.”  
 22 *Salomon v. Bank of Am., N.A.*, No. 75200-COA, 2019 WL 3231009, at \*2 n.3 (Nev. App. July  
 23 17, 2019).

1 Because Bank of America's tender preserved the deed of trust by operation of law, I grant  
2 Bank of America's motion for summary judgment on its declaratory relief claim as well as  
3 Trust's quiet title counterclaim. I dismiss as moot Bank of America's alternative damages  
4 claims against Mountain Gate and Hampton, and I deny as moot Mountain Gate's motion for  
5 summary judgment.

6 **II. CONCLUSION**

7 I THEREFORE ORDER that plaintiff Bank of America, N.A.'s motion for summary  
8 judgment (**ECF No. 78**) is **GRANTED**. The clerk of court is instructed to enter judgment in  
9 favor of plaintiff Bank of America, N.A. and against defendant 6517 Angel Mountain Trust as  
10 follows: It is declared that the homeowners association's non-judicial foreclosure sale conducted  
11 on November 26, 2013 did not extinguish the deed of trust and the property located at 6517  
12 Angel Mountain Avenue in Las Vegas, Nevada remains subject to the deed of trust.

13 I FURTHER ORDER that plaintiff Bank of America, N.A.'s alternative damages claims  
14 against defendants Mountain Gate Homeowners' Association, Hampton & Hampton, P.C., and  
15 Hampton & Hampton Collections, LLC are **DISMISSED** as moot.

16 I FURTHER ORDER that defendant Mountain Gate Homeowners' Association's motion  
17 for summary judgment (**ECF No. 79**) is **DENIED as moot**.

18 I FURTHER ORDER the clerk of court to close this case.

19 DATED this 5th day of October, 2020.

20   
21 ANDREW P. GORDON  
22 UNITED STATES DISTRICT JUDGE  
23